

**UNITED STATES DISTRICT COURT**  
**District of Maine**

ORLANDO PEREZ,  
Plaintiff

v.

ANDROSCOGGIN COUNTY,  
ANDROSCOGGIN COUNTY SHERIFF’S  
DEPARTMENT, and CARSON CARVER,  
Defendants

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) Docket No. 2:15-cv-00505-NT  
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**AMENDED ANSWER AND AFFIRMATIVE DEFENSES OF DEFENDANTS  
ANDROSCOGGIN COUNTY AND ANDROSCOGGIN COUNTY SHERIFF'S  
DEPARTMENT**

NOW COME Defendants Androscoggin County and Androscoggin County Sheriff's Department, through counsel, and hereby respond to the allegations contained in Plaintiff's Complaint as follows:

## AFFIRMATIVE DEFENSES

A. Plaintiff's Complaint fails to state a cause of action against these Defendants upon which relief may be granted.

**B. Plaintiff has failed to comply with the notice requirements in the Maine Tort Claims Act.**

C. These Defendants are entitled to general immunity under the Maine Tort Claims Act.

D. Plaintiff's damages were directly and proximately caused by the acts and/or omissions of an individual and/or entity other than these Defendants.

E. Plaintiff's damages were directly and proximately caused by a legally sufficient superseding/intervening cause.

F. Plaintiff has failed to mitigate his damages as required by law.

G. Plaintiff's claims are barred by provisions of the Prison Litigation Form Act, including but not limited to 42 U.S.C. § 1997(e)(a) and/or 42 U.S.C. § 1997(e)(e).

### ANSWER

#### Summary of Claims

These Defendants deny the allegations contained in this paragraph of Plaintiff's Complaint.

#### Jurisdiction and Venue

1. No response is required to the allegations contained in Paragraph 1 of Plaintiff's Complaint.

2. No response is required to the allegations contained in Paragraph 2 of Plaintiff's Complaint.

#### Parties

3. These Defendants are without sufficient knowledge or information so as to form a belief as to the truth of the allegations contained in this paragraph of Plaintiff's Complaint and therefore deny same.

4. These Defendants admit the first sentence of this paragraph. These Defendants are without sufficient knowledge or information so as to form a belief as to the truth of the remaining allegations contained in this paragraph of Plaintiff's Complaint and therefore deny same.

5. These Defendants admit the allegations contained in this paragraph of Plaintiff's Complaint.

6. These Defendants admit the allegations contained in this paragraph of Plaintiff's Complaint.

7. These Defendants are without sufficient knowledge or information so as to form a belief as to the truth of the allegations contained in this paragraph of Plaintiff's Complaint and therefore deny same.

Factual Background

8. These Defendants repeat and reassert their responses to Paragraphs 1 through and including 7 as if fully set forth herein.

9. These Defendants deny the allegations contained in this paragraph of Plaintiff's Complaint.

10. These Defendants are without sufficient knowledge or information so as to form a belief as to the truth of the allegations contained in this paragraph of Plaintiff's Complaint and therefore deny same.

11. These Defendants deny the allegations contained in this paragraph of Plaintiff's Complaint.

12. These Defendants deny the allegations contained in this paragraph of Plaintiff's Complaint.

13. These Defendants deny the allegations contained in this paragraph of Plaintiff's Complaint.

Count I - Use of Unreasonable, Malicious and/or Excessive Force  
Deliberate Indifference to Serious Medical Needs  
Violation of Civil Rights

14. These Defendants repeat and reassert their responses to Paragraphs 1 through and including 13 as if fully set forth herein.

15. These Defendants deny the allegations contained in this paragraph of Plaintiff's Complaint.

Count II - Assault and Battery

16. These Defendants repeat and reassert their responses to Paragraphs 1 through and including 15 as if fully set forth herein.

17. These Defendants deny the allegations contained in this paragraph of Plaintiff's Complaint.

Count III - Failure to Train and Supervise Personnel  
Violation of Civil Rights

18. These Defendants repeat and reassert their responses to Paragraphs 1 through and including 17 as if fully set forth herein.

19. No response is required to the allegations contained in Paragraph 1 of Plaintiff's Complaint.

20. These Defendants deny the allegations contained in this paragraph of Plaintiff's Complaint.

21. These Defendants deny the allegations contained in this paragraph of Plaintiff's Complaint.

22. These Defendants deny the allegations contained in this paragraph of Plaintiff's Complaint.

Count IV - Respondeat Superior and Vicarious Liability

23. These Defendants repeat and reassert their responses to Paragraphs 1 through and including 22 as if fully set forth herein.

24. These Defendants are without sufficient knowledge or information so as to form a belief as to the truth of the allegations contained in this paragraph of Plaintiff's Complaint and therefore deny same.

25. These Defendants deny the allegations contained in this paragraph of Plaintiff's Complaint.

Count V - Negligent/Intentional Infliction of Emotional Distress

26. These Defendants repeat and reassert their responses to Paragraphs 1 through and including 25 as if fully set forth herein.

27. These Defendants deny the allegations contained in this paragraph of Plaintiff's Complaint.

28. These Defendants deny the allegations contained in this paragraph of Plaintiff's Complaint.

29. These Defendants deny the allegations contained in this paragraph of Plaintiff's Complaint.

WHEREFORE, Defendants Androscoggin County and Androscoggin County Sheriff's Department pray that judgment be entered in their favor and against Plaintiff on all counts which

address them, plus their costs, interest, and attorneys fees.

Dated: January 22, 2016

/s/ Peter T. Marchesi

Peter T. Marchesi, Esq.

/s/ Cassandra S. Shaffer

Cassandra S. Shaffer, Esq.

Wheeler & Arey, P.A.

Attorneys for Androscoggin County

27 Temple Street, P.O. Box 376

Waterville, ME 04903-0376

**UNITED STATES DISTRICT COURT  
District of Maine**

ORLANDO PEREZ,	)	
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Plaintiff	)	
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ANDROSCOGGIN COUNTY,	)	
ANDROSCOGGIN COUNTY SHERIFF'S	)	
DEPARTMENT, and CARSON CARVER,	)	
Defendants	)	
	)	

**CERTIFICATE OF SERVICE**

I, Peter T. Marchesi, Esq., attorney for the Androscoggin County Defendants, hereby certify that:

- Amended Answer and Affirmative Defenses of Defendants Androscoggin County and Androscoggin County Sheriff's Department

has been served this day on Plaintiff by filing with the Clerk of Court using the CM/ECF system which will send notification of such filing(s) to the following:

David Van Dyke, Esq.      *dvandyke@hlrvd.com*

Dated: January 22, 2016

\_\_\_\_\_  
/s/ Peter T. Marchesi

Peter T. Marchesi, Esq.  
Attorney for Androscoggin County  
Defendants  
Wheeler & Arey, P.A.  
27 Temple Street, P.O. Box 376  
Waterville, ME 04903-0376